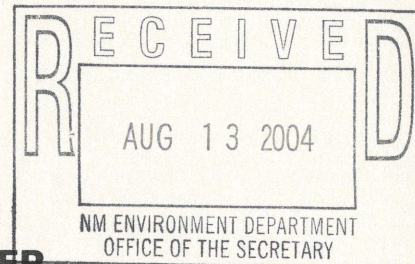


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**SOUTHWEST RESEARCH AND INFORMATION CENTER**

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August 12, 2004

Secretary Ron Curry  
New Mexico Environment Department  
PO Box 26110  
Santa Fe, NM 87502-0110

RE: INEEL Waste Streams BNINW216 and BNINW218

Dear Secretary Curry:

Southwest Research and Information Center (SRIC) has been closely following the situation with INEEL Waste Streams BNINW216 and BNINW218 and the associated suspension of shipments to WIPP. Because of SRIC's long interest in public health and safety and the importance of NMED's WIPP permit, we are especially concerned about any violations of the permit. In this case, we believe that there are major violations of the permit..

In that regard, SRIC expects that NMED will carefully gather and review information about those two waste streams and the permittees' compliance with the permit, and then take appropriate action. In SRIC's view, appropriate action includes a Compliance Order or civil action in court, pursuant the Section 74-4-10 of the New Mexico Hazardous Waste Act.

While we believe good communication between NMED and the permittees is necessary, we are quite concerned about WIPP Acting Manager Paul Detwiler's letter of August 10, 2004 to you and the meeting today "to discuss this situation and its resolution." We believe that NMED it is premature for NMED to "resolve" the situation based on Mr. Detwiler's letter, since it raises additional questions, rather than providing the information needed for resolution.

Specifically, SRIC requests that you consider our concerns, and allow the NMED technical staff an adequate opportunity to review available information, before taking any of the actions requested in Mr. Detwiler's letter.

We have various concerns, not all of which are covered in this letter. Immediate concerns are:

1. Major inconsistencies in the number of drums included in waste streams BNINW216 and BNINW218 and their status.

On May 29, 2001, NMED received from the permittees Waste Stream Profile Form INW216.001, as required by the WIPP permit before any waste from that waste stream could be shipped to WIPP. That Form stated that there were 6,752 (55-gallon) drums in the waste stream.

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Mr. Detwiler's letter states that the waste stream has 6,751 drums, of which 1,761 were supposedly listed in Attachment 4 of the March 9, 2004 Certification Letter that Mr. Detwiler sent to INEEL. Simple math would calculate that as of December 31, 2002 (the end of the INEEL 3,100 m<sup>3</sup> Project), 4,990 (or 4,991) drums from the waste stream had been shipped to WIPP, as should have been shown by the WIPP Waste Information System (WWIS).

The August 10 letter, however, states that number was in error and it should have said that 847 drums remained at INEEL. Thus, 5,904 (or 5,905) drums would have been disposed at WIPP. Obviously, these are very large discrepancies about how many drums remained at INEEL and how many were emplaced at WIPP. Mr. Detwiler has not reconciled those numbers, and the permittees should be required to do so with full documentation.

Similarly, the numbers of drums from the waste streams – 523 from BNINW216 and 1,280 from BNIN218 – that remain at INEEL, according to Mr. Detwiler's letter, should be verified, along with the status of the remaining 11,031 (or 11,032) drums from the two waste streams. The large discrepancies already noted from previous documents from the permittees must be reconciled and documented.

It also appears that the Waste Stream Profile Form that BNFL provided for BNIN216 includes a very different number of drums – more than 21,000 – for the waste stream. The permittees should be required to explain and document that large discrepancy, and to provide a revised, accurate Waste Stream Profile Form.

## 2. Violations of the WIPP permit.

The fact that drums that were not properly characterized have been shipped to WIPP is a serious violation of the permit. In the August 10 letter, Mr. Detwiler says that "103 containers ... were prematurely disposed of in the repository." As already indicated, given the very suspect nature of the numbers that NMED has been given, we believe that further documentation is required before that number of containers is accepted as accurate.

As noted above, SRIC believes that there are other violations of the permit. Further, the WIPP permit (Module II.C.1.g and Section B-4b(1)(i)) requires that the WWIS have complete and accurate data, which SRIC believes the permittees should have verified prior to the December 12, 2003 letter to NMED's Sandra Martin. We also note that NMED's subsequent approval of Audit A-03-05 on December 23, 2003 was based, in part, on that misinformation from the permittees, which appears should also be considered a violation of the WIPP permit. The permittees again apparently did not verify accuracy of the drums with the WWIS before issuing the Certification Letter on March 9, 2004.

## 3. Unsupported assertions as to adequate sampling.

For both waste streams, in the 2001 Waste Stream Profile Forms, INEEL excluded any overpacked drums. Yet, Mr Detwiler's letter asserts that many of the overpacked drums "have been sampled," even though the letter also states that they were not part of the randomly sampled drums. At a minimum, if the overpacked drums have been sampled, the permittees should provide complete sampling documentation. If they are relying on the sampling provided with the

2001 Waste Stream Profile Forms, NMED should not accept that sampling as complying with the permit requirements.

In its December 23, 2003 Approval of Audit A-0305, NMED stated that it "continues to reject the Permittees' argument that no further sampling is necessary for containers in lot two..." That NMED position correctly states the permit's requirements. The subsequent experience with INEEL and CBFO non-compliance with the WIPP permit should reinforce NMED's concern.

Thank you very much for your consideration. I would be pleased to further discuss these and other related issues with you or your staff. In addition, please keep me informed as to your actions regarding this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Don Hancock", is written over a faint, circular embossed seal.

Don Hancock